SUPREME COURT, U. S.
FEB 20 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-880

HENRIETTA PALOMARES,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA,

Respondent,

BLACKMAN PLUMBING COMPANY, ED BLACKMAN, LESTER BLACKMAN, CONSOLIDATED AIR CONDITIONING COMPANY; HARTFORD ACCIDENT AND INDEMNITY COMPANY; EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN,

Real Parties in Interest.

RESPONSE TO BRIEFS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

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Briefs in opposition to Petition for Writ of Certiorari have been filed which

contain the assertion that Petitioner did not raise a federal question before the California Courts.

Under the caption, "APPLICATION OF LABOR CODE SECTION 5406 IS CONSTITUTIONALLY IMPERMISSIBLE",

At the initial phase of the case before the Hon. Marvin M. Schalit, Referee, and more specifically in opposition to his findings and order dated June 21, 1974, attention was specifically called in the record which was later reviewed by the Court of Appeal of California, Second Appellate District, and the Supreme Court of the State of California, to the Constitution, and the Constitutional Point was raised in the following language, at page 4 of the Petition for reconsideration at the level of first instance;

"UNDER THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, BOTH STATE AND FEDERAL, TO CLASSIFY THE SURVIVING WIFE WHO SUBMITS A CLAIM FOR DEATH BENEFITS AS AN OUTLAW BY SUBMITTING A SO CALLED OUTLAWED CLAIM, IS IMPERMISSIBLE. THIS IS PARTICULARLY SO IF TO DO SO SHE IS IMPUTED TO

HAVE KNOWLEDGE OF THE EXISTENCE OF AN INDUSTRIALLY CAUSED CONDITION, FOR A PERIOD OF ONE YEAR AFTER THE DEMISE OF HER HUSBAND, WHO KNEW NOTHING, COMPOUNDED BY THE FACT THAT THE MEDICAL PROFESSION ALSO WAS WITHOUT KNOWLEDGE."

The Referee's report, in spite of the above language, omitted and failed, to consider or make a finding thereon.

In support of the above, reference is made to Exhibit "B", at page 9 et seq., of the answer to Petition for Writ of Certiorari, filed by Real Parties in Interest, by Counsel Messrs. Samuelsen, Bolson, Whitehead & Benes, incorporated herein by reference. Said report and recommendation of Referee on Petition for Reconsideration, in face of the constitutional point raised, was adopted in toto by the Workmen's Compensation Appeals Board of the State of California, (See Appendix B - Order Denying Reconsideration), which was reviewed by the California Courts.

It is clear that the sole issue claimed by the Board and California Courts as necessary to their decisions,

was the State law violation of the Equal Protection clauses of the State and Federal Constitutions, as raised in the first instance.

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